



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 14-02891
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

February 9, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 17, 2013. On May 1, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, E and F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on June 16, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on August 5, 2015. Applicant did not respond to the FORM. The case was assigned to me on October 13, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, without explanations, except for Subparagraphs 1.g., 3.a., and 3.o.

Guideline J - Criminal Conduct & Guideline E - Personal Conduct

1.a. and 2.a. Applicant admits that in May of 2000 he was arrested for, and subsequently pled guilty to, Theft. As a result of this conviction, he was placed on probation.

1.b., 1.e. and 2.a. Applicant admits that in January of 2001 he was arrested for, and subsequently pled guilty to, Felony Burglary of Habitation. As a result of this conviction, he was initially sentenced to 10 years in jail; but this was suspended, and Applicant was placed on probation. However, in February of 2005, he was arrested for, and subsequently pled guilty to, Felony Possession of Marijuana. As a result of this conviction, Applicant was, in part, incarcerated for one year and placed on probation until at least May 1, 2015, the date of the SOR.

1.c., 1.d. and 2.a. Applicant admits that in June of 2002 he was arrested for, and subsequently found guilty of, Burglary of a Motor Vehicle. As a result of this conviction, he was initially sentenced to six months in jail; but this was suspended, and Applicant was placed on probation for nine months. However, later in 2002, he was arrested for, and subsequently pled guilty to, Domestic Violence. As a result of this conviction, Applicant was incarcerated for three months.

1.f. and 2.a. Applicant admits that in October of 2011 he was cited for No Driver's License, Fail to Maintain Financial Responsibility, and Following too Closely. He was fined \$600, which remains unpaid; and there is an active Failure to Appear Warrant as a result of this citation.

1.g. and 2.a. Applicant denies that in January of 2012 he was again cited for No Driver's License, Fail to Maintain Financial Responsibility, and Following too Closely. This appears to be a duplicate of the citation alleged in Subparagraph 1.f.; and as the Government has submitted no documentation in support of this allegation, this is found for Applicant.

1.h. and 2.a. Applicant admits that in March of 2013 he was cited for No Driver's License, Fail to Maintain Financial Responsibility, and Unsafe Turn. He was fined \$400, which remains unpaid.

Guideline E - Personal Conduct

2.b. Applicant admits that in response to "**Section 22 - Police Record**," on his December 17, 3013 e-QIP, he failed to disclose his two traffic citations from October 2011, and from March of 2013, which occurred "**in the past seven (7) years.**" Disclosure is required when the resulting fines were not "less than \$300." I find this to be a wilful falsification.

2.c. Applicant admits that in response to “**Section 22 . . . Police Record (EVER)**,” on his December 17, 3013 e-QIP, he failed to disclose his being charged with felonies in 2001 and in 2005, and with Domestic Violence in 2002. I also find this to be a wilful falsification.

Guideline F - Financial Considerations

3.a. and 3.o. Applicant denies that he is indebted to two creditors for two past-due debts totaling about \$235. As they appear as past due on a July 2014 credit report (Item 5 at pages 5 and 9.); and as Applicant offers nothing further in this regard other than his denial, I find that they are past-due.

3.b.-3.n. Applicant admits that he is indebted to 13 creditors for past-due debts totaling about \$10,281. As Applicant offers nothing further in this regard, I find that they are past due.

3.p. Applicant admits that he has outstanding court fines totaling about \$1,000. As Applicant offers nothing further in this regard, I find that they are still outstanding.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a) describing the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J - Criminal Conduct

Paragraph 30 of the adjudicative guidelines sets out the security concern relating to Criminal Conduct:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(a) provides that “*a single serious crime or multiple lesser offenses,*” may raise security concerns. Paragraph 31(d) provides that an “*individual [who] is currently on . . . probation,*” may also raise security concerns. Finally, Paragraph 31(f) provides that a “*conviction in . . . state court . . ., sentenced to imprisonment for a term exceeding one year and incarcerated as a result for not less than a year,*” may raise security concerns. Applicant has two felony convictions, was incarcerated for a year as a result of his second felony conviction, and appears to be still on probation as a result of that second conviction. I find no countervailing mitigating condition that is applicable here. Applicant has a long history of criminal conduct, which is found against Applicant.

Guideline E - Personal Conduct

The security concern for Personal Conduct is set out in AG Paragraph 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), “*deliberate omission, concealment, or falsification of relevant facts*

from any personnel security questionnaire . . . or similar form,” may raise security concerns. Here, Applicant was not candid about his past criminal conduct on his December 2013 e-QIP. Again, I find no countervailing mitigating condition that is applicable here. Personal Conduct is found against Applicant.

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations,”* may raise security concerns. Applicant has significant past-due debts, which he has not yet resolved. I can find no countervailing Mitigating Condition that is applicable here. Financial Considerations are found against Applicant.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. Under AG Paragraph 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 2(a):

“ (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concerns arising from his Criminal Conduct, Personal Conduct and Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	Against Applicant
Subparagraph 3.g:	Against Applicant
Subparagraph 3.h:	Against Applicant
Subparagraph 3.l:	Against Applicant

Subparagraph 3.j:	Against Applicant
Subparagraph 3.k:	Against Applicant
Subparagraph 3.l:	Against Applicant
Subparagraph 3.m:	Against Applicant
Subparagraph 3.n:	Against Applicant
Subparagraph 3.o:	Against Applicant
Subparagraph 3.p:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge